

Chapter 227

CABLE TELEVISION

[HISTORY: Adopted by the Village Board of the Village of Plover 7-17-2002 (Ch. 20 of the 1985 Code). Amendments where noted where applicable.]

§ 227-1. Short title.

This Cable Communications Regulatory Ordinance shall be known and may be cited as the "Ordinance" or "Regulatory Ordinance."

§ 227-2. Word usage and definitions.

For the purpose of this chapter, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

APPLICANT — A person, as defined in this section, who submits an initial proposal to provide cable service to the Village.

BASIC SERVICE — Any service tier which includes the retransmission of local television broadcast signals.

CABLE CHANNEL — A frequency band capable of carrying at least one standard color video signal, but the use of a channel is not limited to carrying a video signal.

CABLE OPERATOR — Any person or group of persons who or which provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system or who or which otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

CABLE SERVICE

- A. The one-way transmission to subscribers of video programming or other programming service; and
- B. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

CABLE SYSTEM — A facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within the Village of Plover. But such term does not include:

- A. A facility that serves only to retransmit the television signals of one or more television

broadcast stations;

- B. A facility that serves subscribers without using any public rights-of-way;
- C. A facility of a common carrier which is subject, in whole or in part, to the provisions of Subchapter II of 47 U.S.C.A. Subchapter V, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;
- D. An open video system certified by the FCC; or
- E. Any facilities of any electric utility used solely for operating its electric utility system.

CONVERTER — An electronic device and any associated channel selector which converts signals to a format which permits a subscriber to receive the signals transmitted via the cable system.

FCC — The Federal Communications Commission or any legally designated successor.

FRANCHISEE — A person who, in accordance with the provisions of this chapter, executes a franchise agreement with the Village for the nonexclusive privilege to erect, construct, operate, maintain or dismantle a cable system in the Village.

GROSS REVENUES — All revenue derived from the operation of the cable system to provide cable services by the franchisee, any cable operator of the cable system or, only to the extent necessary to prevent evasion, their affiliates, subsidiaries, parent and any person in which the franchisee has a financial interest that are not cable operators but that are performing the normal functions and responsibilities of a cable operator.

- A. This definition is intended to be read to reach as broadly as possible to encompass all revenues, subject only to the limitations imposed by federal law. Therefore, "gross revenues" would include, by way of example but not limitation, the following:
 - (1) Basic subscriber service monthly fees;
 - (2) Optional service monthly fees;
 - (3) Installation and reconnection fees;
 - (4) Fees charged for late payment of bills;
 - (5) Leased channel fees;
 - (6) Converter rentals;
 - (7) Production equipment and personnel fees;
 - (8) Advertising revenues;
 - (9) The sale, exchange or cablecast of any programming developed on or for community service channels or institutional users;
 - (10) All recoveries of bad debts previously written off and revenues from the sale or

assignment of bad debts; and

(11) Revenue received from the provision of cable modems and internet access service.

- B. This sum shall be the basis for computing the fee imposed pursuant to § 227-32 of this chapter. "Gross revenues" shall not include any taxes on services furnished by the franchisee which are imposed upon any subscriber or user by the state, the Village or other governmental unit and collected by the franchisee on behalf of said governmental unit (a franchise fee is not such a tax).

MINORITY — Citizens or lawful permanent residents of the United States, defined for the purposes of this chapter to include Asian, Black, Hispanic and Native American men and women. Bona fide minority group memberships shall be established on the basis of the individual's claim that he or she is a minority and is so regarded by that particular minority community.

NORMAL BUSINESS HOURS — A minimum of 50 hours Monday through Friday and four hours on Saturday.

NORMAL OPERATING CONDITIONS — Includes those service conditions which are within the control of the franchisee. These include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system. Conditions which are not within the control of the franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe weather out of the ordinary for the area.

PERSON — Includes any individual, partnership, association, corporation, legal entity or organization of any kind. Whenever used in any clause prescribing a penalty, the term "person" as applied to partnerships or associations includes partners or members thereof and, if applied to corporations, the officers thereof. "Person" shall not include a municipal corporation unless otherwise indicated.

PROPOSAL — An applicant's formal written response to the Village's request for proposals or any other initial application to provide cable services submitted to the Village pursuant to this chapter.

PUBLIC, EDUCATIONAL OR GOVERNMENT ACCESS or PEG — The use of the cable system by members of the public, educational institutions and representatives of governments to transmit information to subscribers generally or to specific recipients via channels designated for such use in a franchise agreement over franchisee-provided channels.

RIGHTS-OF-WAY — Refers to the Village rights-of-way, alleys, roads, easements, and other Village-owned property primarily dedicated to, designed for or actually and customarily used for vehicular or pedestrian travel or any easement the franchisee is authorized to use by federal law. It does not include the Village-owned real estate utilized primarily for any purpose other than vehicular or pedestrian travel. This exclusion includes, without limitation, sidewalks, parking, and ingress/egress areas appurtenant to such other use.

SERVICE INTERRUPTION — The loss of picture or sound on one or more channels. The definition of "service interruption" affects the timing of when the franchisee must respond to a service problem.

SUBSCRIBER — A municipal corporation or person who or which lawfully receives any cable service provided or distributed by a cable system franchisee. Each unit of multiple-dwelling unit or complex shall be considered a separate subscriber.

TWO-WAY CAPABILITY — The ability to receive and transmit signals from a subscriber terminal to other points in the system.

USER — A municipal corporation or person utilizing PEG or institutional network channels, including all related facilities, for purposes of production and/or transmission of electronic or other signals as opposed to utilization solely as a subscriber.

VALID AUTHORIZATION — An authorization valid under federal or state law.

VALUATION — The value determined by an audit of system assets pursuant to generally accepted accounting principles. Procedures for valuation may be specified in a franchise agreement.

VILLAGE — The Village of Plover, a municipal corporation of the State of Wisconsin.

VILLAGE PRESIDENT AND VILLAGE BOARD — The governing body of the Village.

VILLAGE PROPERTY — Includes all real property owned by the Village, other than rights-of-way, and all property held in a proprietary capacity by the Village which is not subject to licensing as provided in this chapter.

§ 227-3. Findings and purpose.

A. The Village President and Village Board find that the Village's rights-of-way constitute valuable public property:

- (1) Having been acquired and maintained by the Village over many years at taxpayer expense;
- (2) Being capable of providing rights-of-way uniquely valuable to private companies for providing cable services;
- (3) Constituting public investments for which the taxpayers are entitled to a fair monetary return on the Village's past and future investment in the Village's infrastructure; and
- (4) Comprising significant assets which should be managed fairly and appropriately to enhance the public safety and economy.

B. Therefore, this chapter is intended to:

- (1) Regulate the erection, construction, reconstruction, installation, operation, maintenance, dismantling, testing, repair and use of the cable system in, upon, along, across, above, over or under or in any manner connected with the rights-of-way, public ways or public places within the jurisdiction of the Village, as now or in the future may exist;
- (2) Provide for the payment of certain fees and other valuable considerations to the Village to regulate the construction and operation, use and development of the cable system within the Village;

- (3) Provide conditions under which the cable system will serve present and future needs of government, public institutions, commercial enterprises, lawful public and private organizations, and the citizens and general public of the Village;
- (4) Provide remedies and prescribe penalties for violations of this chapter;
- (5) Permit and manage reasonable access to the public ways of the Village for cable purposes on a competitively neutral basis;
- (6) Conserve the limited physical capacity of the rights-of-way held in the public trust by the Village;
- (7) Assure that the Village's current and ongoing costs of granting and regulating private access to and use of the rights-of-way are fully paid by the persons seeking such access and causing such costs;
- (8) Secure fair and reasonable compensation to the Village and the residents of the Village for permitting private use of the rights-of-way;
- (9) Assure that all cable companies providing facilities or services within the Village comply with the ordinances, rules, and regulations of the Village;
- (10) Assure that the Village can continue to fairly and responsibly protect the public health, safety, and welfare;
- (11) Enable the Village to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition, and technological development.

§ 227-4. Franchise agreement.

- A. Issuance of franchises subject to agreement. Within 60 days after written notification of the award of a franchise by the Village, a selected applicant shall execute a franchise agreement which shall set forth the terms and provisions of the franchise.
- B. Relationship of franchise and franchise agreement to laws. Each franchise issued by the Village is subject to, and the franchisee must exercise all rights granted to it in accordance with, its franchise agreement and applicable law, including this chapter.
- C. Nature of franchise agreements; conflicts. Each franchise agreement is a contract, subject to the Village's exercise of its police and other powers. A franchise agreement shall not confer any rights upon the franchisee or limitations upon the Village other than as expressly provided therein. Subject to the exercise of the Village's police and other powers, in the case of any conflict between the express terms of a franchise agreement and the express terms of this chapter, the franchise agreement shall govern. A franchisee, by entering into a franchise agreement, does not waive its rights to challenge the lawfulness of any particular enactment after the date the franchise is issued, including on the grounds that a particular enactment is an unconstitutional impairment of contractual rights.

§ 227-5. Policy of innovation.

Recognizing the fluid and expanding state of the development of communications technology and uses, it is the policy of the Village to strongly encourage experimentation and innovation in the development of cable system technology uses, services, programming and techniques that will be of general benefit to the community; provided that all such experiments and innovations shall be subject to the rules of the FCC and any other federal, state and Village laws and regulations.

§ 227-6. Construal of time frames.

Whenever this chapter or the franchise agreement sets forth any time for any act to be performed by the franchisee, such time shall be deemed of the essence, and the franchisee's failure to perform within the time allotted shall, in all cases, be sufficient grounds for the Village to invoke the remedies available under the terms and conditions of this chapter and the franchise agreement.

§ 227-7. Franchise required; general terms.

- A. Franchise required. No person shall construct, install, maintain or operate a cable system within, along or under any rights-of-way in the Village, or any other public property in the Village, or, to the maximum extent of the Village's authority, provide cable service in the Village unless a franchise has first been granted by the Village President and Village Board pursuant to the provisions of this chapter and unless the franchise agreement is in full force and effect.
- B. Franchise nonexclusive. Any franchise granted pursuant to this chapter by the Village shall not be exclusive, and the Village specifically reserves the right to grant other franchises to any persons or to authorize itself to provide cable services at any time if the Village determines that it is in the public interest to do so.
- C. Franchise binding. All provisions of this chapter and any franchise agreement shall be binding upon the franchisee, its successors, lessees or assignees.

§ 227-8. Grant of authority.

- A. Length of franchise. Any franchise granted by the Village pursuant to this chapter shall commence upon the date specified in the franchise agreement by the franchisee and the Village and shall be for a period specified by the franchise. All franchises shall be subject to periodic review by the Village in accordance with § 227-20 of this chapter. In no event shall any franchise exceed a term of 15 years, subject to the conditions and restrictions as provided in this chapter. A franchise agreement may be renewed pursuant to the provisions of this chapter and federal law. No privilege of exemption shall be inferred from the granting of any franchise unless it is specifically prescribed.
- B. No right of property. The granting of any franchise pursuant to this chapter shall be a privilege and shall not impart to the franchisee any right of property in any Village rights-of-way or other Village property.

§ 227-9. Local regulatory framework.

- A. Continuing regulatory jurisdiction. The Village President and Village Board shall have continuing regulatory jurisdiction and supervision over the operation of any franchise granted pursuant to this chapter. However, it is recognized that the daily administrative, supervisory and enforcement responsibilities of the provisions of this chapter and the franchise agreement shall be delegated and entrusted to the Village Clerk, or his designee, as hereafter provided.
- B. Village Clerk responsibilities. The Village Clerk shall have the following responsibilities and authority. The Village Clerk shall:
- (1) Administer the provisions of this chapter and the franchise agreement.
 - (2) Represent the Village in all matters pertaining to the implementation of the provisions of this chapter and the franchise agreement.
 - (3) Resolve disputes or disagreements between subscribers, users, potential subscribers and users, and the franchisee as to matters involving an interpretation of this chapter or the franchise agreement, or other matters subject to the Village's jurisdiction, but only in the event that such parties are unable first to resolve their dispute, provided that nothing in this subsection is meant to waive any rights a franchisee may have to appeal the Village's resolution of a dispute.
 - (4) Review and audit reports and other documents submitted to the Village as required by this chapter or other law, so as to ensure that the necessary reports are completed and fulfilled pursuant to the terms of this chapter.
 - (5) Assure that all records, rules and charges pertinent to the system are made available for inspection at reasonable hours upon reasonable notice consistent with the franchise agreement and applicable law.
 - (6) Confer with franchisees, assist in the coordination among franchisees, and enforce requirements under applicable law and franchise agreements for interconnections among cable systems and other systems.
 - (7) Advise the Village President and Village Board on matters which may constitute grounds for termination of the franchise agreement in accordance with this chapter and a franchise.
 - (8) Advise the Village President and Village Board on proposed transfers of the system.
 - (9) Ensure that the franchisee makes any public access channel(s) available to all basic cable subscribers in the Village on a nondiscriminatory basis.
 - (10) Ensure that the operation of any public access channel is free of program censorship and control to the extent permitted by law.
 - (11) Perform any other duties assigned under the provisions of this chapter or other legislation which may hereafter be enacted by the Village President and Village Board or such other related duties as the Village President and Village Board may direct; provided, however, that only the Village President and Village Board may take enforcement action against any franchisee.

§ 227-10. Open video systems.

- A. The purpose of this section is to set forth the requirements for any local exchange carrier that desires to provide cable service to its customers within the Village. Open video systems (OVS) are defined in Section 653 of the Telecommunications Act of 1996.
- B. Any person intending to provide cable service to the Village residents through an OVS must, to the extent permitted by state and federal law, obtain a cable television franchise from the Village on terms which, when considered as a whole, are no more favorable or less burdensome than those required of all other franchisees, including but not limited to the following, as well as other legal permissible requirements imposed by the Village:
- (1) Provide channel space for all public, educational and government access channels available in the Village.
 - (2) Provide channel space for all broadcast channels whose area of dominant influence (ADI) includes the Village.
 - (3) Meet the requirements set forth for cable television franchise holders concerning:
 - (a) Obtaining all licenses and permits required by the Village.
 - (b) Meeting the customer service standards set forth in § 227-17 of this chapter.
 - (c) Providing emergency override facilities.
 - (4) Compensate the Village for the provider's use of public rights-of-way, structures or other facilities in the same manner as is required of cable television franchise holders.
 - (5) Provide bandwidth equivalent to that required by the I-NET.
 - (6) Provide PEG funding equivalent to that required of cable television franchise holders.

§ 227-11. Geographic coverage of cable system.

- A. Annexation. The rights and privileges awarded pursuant to this chapter shall relate to and cover the entire present territorial limits of the Village and any area annexed thereto during the term of a franchise agreement. In the event that the Village annexes additional territory during the term of the franchise agreement, the franchisee shall provide cable service within such areas with due diligence consistent with the line extension criteria contained in Subsection B; provided, however, that the franchisee is not required to extend its cable system into any annexed area that is served by another cable operator of a cable system.
- B. Line extension. A franchisee shall construct and operate its cable system so as to provide cable service to all parts of its franchise area as provided in the franchise agreement and having a density of at least 15 residential dwelling units per street 1/2 mile of cable system or where eight residential dwelling units per street 1/2 mile agree to subscribe to cable service for at least one year. In addition, all areas which reach such density at any time during the franchise term shall be provided cable service upon reaching the minimum density. Subject to the above-described minimum density, any residential dwelling unit located within 150 feet of the nearest tap on a franchisee's cable system shall be connected to the cable system at no charge other than the standard installation charge.

- (1) Where the density is less than that specified above, the franchisee shall inform persons requesting cable service of the possibility of paying for installation or a line extension and shall offer to provide them with a free written estimate of the cost, which shall be provided within 15 working days of such a request. The charge for installation or extension for each person requesting cable service shall not exceed a pro rata share of the actual cost of extending the cable service. If, for example, the density in an area were three residential units per 1/2 mile, the franchisee would pay 1/5 of the costs of the extension and persons agreeing to take cable service would pay the remaining 4/5.
- (2) The franchisee shall, upon request by any potential subscriber residing in the Village beyond the one-hundred-fifty-foot limit, extend cable service to such subscriber provided that the subscriber shall pay the net additional extension costs.
- (3) Under normal operating conditions, if the franchisee cannot perform installations within the times specified in applicable customer standards, the subscriber may request and is entitled to receive a credit equal to the charge for a standard installation. For any installation that is not a free installation or a standard installation, the franchisee shall provide the subscriber with a written estimate of all charges within seven days of a request by the subscriber. Failure to comply will subject the franchisee to appropriate enforcement actions. This subsection does not apply to the introduction of new products and services when the franchisee is utilizing a phased introduction.
- (4) In all cases where new developments and subdivisions are to be constructed to be served in whole or in part by underground power and telephone utilities, the owner or developer of such areas shall provide reasonable notice to the franchisee of the availability of trenches, backfill and specifications of all necessary substructures in order that the franchisee may install all necessary electronic cable facilities. In no event shall such undergrounding be at any cost or expense to the Village.
- (5) Subject to the other provisions of this section, cable service shall be made available upon request to all residential dwelling units within the designated franchise area.
- (6) Nothing in this section shall prohibit a person from requiring that cable system facilities conform to laws and regulations and reasonable conditions necessary to protect safety, functioning, appearance and value of premises or the convenience and safety of persons and property.
- (7) Nothing in this section shall prohibit a person from requiring the franchisee to agree to indemnify or compensate the owner for damages or from liability for damages caused by the installation, operation, maintenance or removal of system facilities by the franchisee.

§ 227-12. Conditions of rights-of-way occupancy.

- A. Written approval. A franchisee shall first obtain the written approval of the Public Works Manager prior to commencing construction on the rights-of-way and public places of the Village. Approval shall be in accordance with relevant charter and code provisions and

administrative regulations, which approval shall not be unreasonably withheld. The franchisee shall not open or disturb the surface of any rights-of-way or public place for any purpose without first having obtained a permit to do so in the manner provided by law. All excavation shall be coordinated with other utility excavation or construction so as to minimize disruption to the public.¹

B. Use of existing poles or conduits.

- (1) To maximize public and employee safety, to minimize visual clutter of aerial plant, and to minimize the amount of trenching and excavation in and along the Village rights-of-way and sidewalks for underground plant, the franchisee shall make every commercially reasonable effort to co-locate compatible facilities within the rights-of-way subject to the engineering requirements of the owners of utility poles and other facilities. The franchisee shall utilize existing poles, conduits and other facilities whenever commercially reasonable and shall not construct or install any new, different or additional poles, conduits or other facilities, whether on public property or on privately owned property, until the written approval of the Village is obtained. No location of any pole or wire-holding structure owned by the franchisee shall be a vested interest.
- (2) The facilities of the franchisee shall be installed underground in those areas of the Village where existing telephone and electric services are both underground at the time of construction by the franchisee. In areas where either telephone or electric utility facilities are installed aerially at the time of system construction, the franchisee may install its facilities aerially; however, at such time as the existing aerial facilities are placed underground, the franchisee shall likewise place its facilities underground at the sole cost to the franchisee.

C. Minimum interference. All transmission and distribution structures, lines and equipment erected by the franchisee shall be located so as to cause minimum interference with the unencumbered use of rights-of-way and other public places and minimum interference with the rights and reasonable convenience of property owners who adjoin any of the rights-of-way and public places.

D. Disturbance or damage. In case of disturbance or damage caused by the franchisee to any rights-of-way or public place, the franchisee shall, at its own cost and expense and in the manner approved by the Village, replace and restore such rights-of-way or public place in as good a condition as before the work performed by the franchisee which caused such disturbance or damage.

E. Temporary relocation.

- (1) At any time during the period of the franchise, the franchisee shall, at its own expense, protect, support, temporarily disconnect, relocate or remove any of its property when, in the opinion of the Village:
 - (a) The same is required by reason of traffic conditions, public safety, rights-of-way vacation, freeway or rights-of-way construction, or alteration to

1. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

or establishment of any rights-of-way or any facility within the rights-of-way, sidewalk, or other public place, including but not limited to installation of sewers, drains, waterlines, power lines, traffic signal lines or transportation facilities; or

- (b) A Village project or activity makes disconnection, removal, or relocation necessary or less expensive for the Village.
- (2) The franchisee shall, on request of any person holding a permit to move a building, temporarily raise or lower its wires to permit the movement of such buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same, and the franchisee shall have the authority to require such payment in advance. The franchisee shall be given not less than five days' advance notice to arrange such temporary wire alterations.
- F. Emergency. Whenever, in case of fire or other emergency, it becomes necessary in the judgment of the Village Clerk, Police Chief, Fire Chief, or their delegates to remove or damage any of the franchisee's facilities, no charge shall be made by the franchisee against the Village for restoration, repair or damages unless such restoration, repair or damages result from negligence by the Village or its agents.
- G. Tree trimming. The franchisee shall have the authority to trim trees on public rights-of-way at its own expense as may be necessary to protect its wires and facilities, subject to supervision and direction by the Village. Trimming of trees on private property shall require consent of the property owner. Any trimming of trees by the franchisee in the rights-of-way and public ways shall be subject to such regulation as the Public Works Manager or other authorized official may establish to protect the public health, safety and convenience.²
- H. Protection of facilities. Nothing contained in this section shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid damaging the franchisee's facilities while performing any work connected with grading, regrading or changing the line of any rights-of-way or public place or the construction or reconstruction of any sewer or water system.
- I. Installation records. Each franchisee shall keep accurate installation records of the location of all facilities in the rights-of-way and public ways and furnish them to the Village upon request. A franchisee shall cooperate with the Village to furnish such information in an electronic mapping format compatible with the then-current Village electronic mapping format. Upon completion of new or relocation construction of underground facilities in the rights-of-way and public ways, the franchisee shall provide the Village with installation records in an electronic format compatible with the then-current Village electronic mapping format showing the location of the underground and aboveground facilities.
- J. Locating facilities.
 - (1) If, during the design process for public improvements, the Village discovers a potential conflict with proposed construction, the franchisee shall either locate and, if

2. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

necessary, expose its facilities in conflict or use a location service under contract with the Village to locate or expose its facilities. Each franchisee is obligated to furnish the location information in a timely manner, but in no case longer than 30 days.

- (2) The Village reserves the prior and superior right to lay, construct, erect, install, use, operate, repair, replace, remove, relocate, regrade, widen, realign, or maintain any rights-of-way and public ways and aerial, surface, or subsurface improvements, including but not limited to water mains, traffic control conduits, cable devices, sanitary or storm sewers, subways, tunnels, bridges, viaducts or any other public construction within the rights-of-way of the Village limits.
- K. Village's rights. When the Village uses its prior superior right to the rights-of-way and public ways, the franchisee shall move its property that is located in the rights-of-way and public ways, at its own cost, to such a location as the Village directs. This right does not apply when the Village acts to provide cable service and the issue relates to the location of the cable system owned in whole or in part by the Village. Notwithstanding the foregoing, in the event that the public project is paid for totally or in part by nonpublic funds, then the franchisee's costs of moving its property shall be borne by the source of the nonpublic funds in the same ratio as the nonpublic funds bear to the total project costs.
- L. Facilities in conflict. If, during the course of a project, the Village determines that the franchisee's facilities are in conflict, the following shall apply:
- (1) Prior to Village notice to proceed to contractor. The franchisee shall, within a reasonable time, but in no event exceeding three months, remove or relocate the conflicting facility. This time period shall begin running upon receipt by the franchisee of written notice from the Village. However, if both the Village and the franchisee agree, the time frame may be extended based on the requirements of the project.
 - (2) Subsequent to Village notice to proceed to contractor: The Village and the franchisee will immediately begin the coordination necessary to remove or relocate the facility. Removal or relocation is to begin no later than 72 hours, if practicable, after written notification from the Village of the conflict.
- M. Permits.
- (1) The franchisee agrees to obtain a permit as required by the Village prior to removing, abandoning, relocating or reconstructing, if necessary, any portion of its facilities. Notwithstanding the foregoing, the Village understands and acknowledges that there may be instances when the franchisee is required to make repairs, in compliance with federal or state laws, that are of an emergency nature. The franchisee will notify the Village prior to such repairs, if practicable, and will obtain the necessary permits in a reasonable time after notification to the Village.
 - (2) Reimbursement paid through the permitting process is separate, and in addition to, any other fees included in the franchise. The franchisee, at the time of or prior to submitting construction plans, shall provide the Village with a description of the type of service to be provided by the franchisee in sufficient detail for the Village to determine compliance with the franchise and applicable law.

- (3) The Village may issue reasonable policy guidelines to all franchisees to establish procedures for determining how to control issuance of engineering permits to multiple franchisees for the use of the same rights-of-way for their facilities. The franchisee shall cooperate with the Village in establishing such policy and comply with the procedures established by the Village Clerk or his designee to coordinate the issuance of multiple engineering permits in the same rights-of-way segments.
- N. Restoration. If, in the installation, use or maintenance of its facilities, the franchisee damages or disturbs the surface or subsurface of any rights-of-way or public ways or adjoining public property or the public improvement located thereon, therein, or thereunder, the franchisee shall promptly, at its own expense and in a manner acceptable to the Village, restore, repair or replace the property thereon, therein, or thereunder in as good a condition as before such damage or disturbance. If such restoration, repair or replacement is not completed within a reasonable time or such repair or replacement does not meet the Village's reasonable standards, the Village shall, after 10 days' written notice to the franchisee, have the right to perform the necessary restoration, repair, or replacement, either through its own forces or through a hired contractor, and the franchisee agrees to reimburse the Village for its expenses in so doing within 30 days after its receipt of the Village's invoice therefor.
- O. Relocation delays.
- (1) If Village has provided to the franchisee all notices required by this chapter and the franchisee's relocation effort so delays construction of a public project causing the Village to be liable for delay damages, the franchisee shall reimburse the Village for those damages attributable to the delay created by the franchisee. In the event that the franchisee should dispute the amount of damages attributable to the franchisee, the matter shall be referred to the Public Works Manager for a decision. In the event that the franchisee disagrees with the Public Works Manager's decision, the matter shall be submitted to the Village Clerk or the Village Clerk's designee for determination, whose decision shall be final and binding upon the franchisee as a matter of the Village review, but nothing herein waives any right of appeal to the courts.³
- (2) In the event that the Village becomes aware of a potential delay involving the franchisee's facilities, the Village shall promptly notify the franchisee of this potential delay.
- P. Interference with Village facilities. The installation, use and maintenance of the franchisee's facilities within the rights-of-way and public ways authorized herein shall be in such a manner as not to interfere with the Village's placement, construction, use and maintenance of its rights-of-way and public ways, rights-of-way lighting, water pipes, drains, sewers, traffic signal systems or other Village systems that have been, or may be, installed, maintained, used or authorized by the Village.
- Q. Interference with utility facilities. The franchisee agrees not to install, maintain or use any of its facilities in such a manner as to damage or interfere with any existing facilities of another utility located within the rights-of-way and public ways of the Village and agrees

3. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

to relocate its facilities, if necessary, to accommodate another facility relocation. Nothing in this subsection is meant to limit any rights a franchisee may have under applicable law to be compensated for the cost of relocating its facilities from the utility that is requesting the relocation.

§ 227-13. Use, rental or lease of utility poles and facilities.

Each franchisee assumes all responsibility for gaining permission from any electric, gas or telephone utility in the Village for the use, rental or lease of poles, underground conduits and other structures and facilities for the purpose of extending, carrying or laying the franchisee's wires, cables, electronic conductors and other facilities and appurtenances necessary or desirable in conjunction with the establishment and operation of the system.

§ 227-14. Cable system design.

It is the intent of the Village that the cable system provide the broadest range of services possible. In this regard, the requirements stated in this section are intended only as minimum specifications for the system, and final determination of system design for franchisees will be made through the initial licensing or renewal process. The Village may increase or otherwise alter the requirements in an RFP for an initial franchise. Applicants are strongly encouraged to offer the Village, through the proposal process, the broadest range of services, facilities, equipment, technical assistance and other related considerations as technologically and economically feasible. Neither the specifications of the minimums in Subsections A through K nor the final terms of a franchise agreement shall be interpreted to waive any rights or obligations of the franchisee or the Village under 47 U.S.C. § 546.

- A. Channel capacity. The franchisee shall construct, at a minimum, a system that provides a minimum capacity of 750 MHz and that is designed in a way so that it can deliver the channels in a manner reasonably responsive to customer demand. The system shall be designed so that the number of channels may be increased as supply and demand for additional channel utilization exceed the number initially activated and so that the capacity of the cable system may be increased without substantial reconstruction of the cable system.
- B. System configuration. The franchisee shall design and construct the system in such a manner as to provide maximum utilization flexibility for both subscribers and users.
- C. Emergency override. Except as inconsistent with FCC regulations, the system shall include an emergency alert capability which shall permit the Village President or the Village President's designee to override the audio on all television channels in the case of public emergencies as determined by the Village President.
- D. Standby power. The franchisee shall maintain in constant readiness equipment capable of providing standby power for the cable system as consistent with sound engineering practices given the franchisee's system design.
 - (1) Such equipment shall be constructed so as to revert to a standby mode when alternating current power returns.
 - (2) The franchisee shall comply with all utility and other safety regulations to prevent the

alternate power supply from powering a "dead" utility line so as to prevent injury to any person.

- E. Two-way capability. Maximum two-way interactive service capability as reasonably justified in light of the needs and interests of the community and the costs thereof, considering projected advances in technology, shall be designed into the system at its inception.
- F. PEG channels. In addition to the other services proposed by applicants, the Village shall place significant emphasis on the provision of PEG channels, facilities and related considerations. Such areas include but are not limited to the following: channel(s) for government usage, educational usage (public and nonprofit schools, colleges and universities), public access, and local origination. Applicants are strongly encouraged to investigate the needs and desires of potential users and to offer such community services as are technologically and economically feasible. Both internal institutional communications and connection to subscribers are encouraged where appropriate. In this regard, applicants should also consider and respond to the request for proposals in the area relating to institutional networks.
- G. Publicizing PEG channels. The franchisee shall not take any actions that would discourage or prevent maximum utilization of all PEG channels provided and shall cooperate with the Village and managers of PEG channels to ensure that subscribers are aware of the channels, can access them easily, and, to the extent that a franchisee (or some entity acting on a franchisee's behalf) is involved in publicizing the franchisee's other channels or channel schedules, that the PEG channels and channel schedules are similarly publicized.
- H. Facilities and management. In regard to the community service provisions referred to in this section, applicants are strongly encouraged to consider and provide studio facilities, production equipment, technical assistance and other facilities and equipment to enable the Village and its residents to fully utilize the system as not only an entertainment medium but as an intracommunity communications and education medium. Such services, facilities, production equipment, origination points, hours of availability where appropriate, costs and all other necessary information relating to community service shall be as proposed by applicants and as provided for in the franchise agreement. Specific operational details and responsibilities, including the Village's right to designate management organizations to operate various community service channels and facilities (a right specifically reserved herein by the Village), shall be provided for in the franchise agreement and a separate agreement between the franchisee, the Village and any management organizations designated by the Village for this purpose.
- I. Public use connections. At a minimum, the franchisee shall offer to provide, without charge, one outlet of services to a conveniently accessible point in each public, private and parochial school, excluding home schools, nonprofit college and university and each fire station, police station, public library branch and such other facilities used for municipal purposes as may be designated by the Village. A franchise agreement may specify the particular conditions under which the outlets will be provided.
- J. Institutional network. Each franchisee either shall provide an institutional network for educational and government use or shall provide an appropriate contribution for

construction or upgrade of an institutional network, which contribution shall be specified in the franchise agreement.

- K. Reception. The system shall be capable of and shall produce a picture which meets all applicable FCC technical standards. This requires that equipment be installed at the head end to allow the franchisee to receive or cablecast signals in substantially the form received, without substantial alteration or deterioration (for example, the head end should include equipment that will transmit color video signals received at the head end in color). Equipment must be installed so that all closed captioning programming received by the cable system shall include the closed caption signal so long as the closed captioned signal is provided consistent with FCC standards. Equipment must be installed so that all local signals received in stereo or with secondary audio tracks (broadcast and PEG) are retransmitted in those same formats. In the case of AM/FM radio transmission, the above specifications, where applicable, shall apply.

§ 227-15. Privacy.

- A. Valid authorization of subscriber. The franchisee shall strictly observe and protect the rights of privacy and property rights of subscribers and users at all times. Individual subscriber preferences of any kind, viewing habits, political, social or economic philosophies, beliefs, creeds, religions or names, addresses or telephone numbers shall not be revealed to any person, governmental unit, police department or investigating agency unless upon the authority of a court of law or upon prior voluntary valid authorization of the subscriber, which shall not in any event be required as a condition of receiving service.
- (1) Neither the franchisee nor any other person shall initiate in any form the discovery of any information on or about a subscriber's premises without prior valid authorization from the subscriber potentially affected.
 - (2) A subscriber may at any time revoke any authorization previously made by delivering to franchisee, in writing, by mail or otherwise, his or her decision to so revoke. Any such revocation shall be effective upon receipt by the franchisee.
- B. Release of subscriber information. The franchisee may release the number of its subscribers but only as a total number and as a percentage of the potential subscribers throughout the Village. When indicating the number of subscribers viewing a particular channel at a particular time, the franchisee shall indicate only the total number of subscribers viewing during the relevant time and the percentage of all subscribers which they represent, but never the identity of a particular subscriber. The franchisee may maintain such information as is necessary to bill subscribers for the purchase of any system service.
- C. Subscriber monitoring.
- (1) No monitoring of any subscriber terminal shall take place without specific prior valid authorization by the user of the terminal in question; however, the franchisee may conduct system-wide or individually addressed "sweeps" for the purpose of verifying system integrity or billing accuracy. In no event shall aural or visual monitoring of any kind take place without a clear indication to the subscriber that such monitoring is

taking place. The franchisee shall not initiate a subscriber response mechanism without the Village Clerk's making a finding that the system can operate effectively and yet give absolute protection against any invasion of privacy.

- (2) The franchisee shall not tabulate any test results, nor permit the use of the system for such tabulation, which would reveal the commercial product preferences or opinions of subscribers, members of their families or their invitees, franchisees or employees without prior valid authorization of the subscriber.
- D. Privacy violations. Each compilation, publication, tabulation or other dissemination of each piece of information made or permitted to be made in violation of this section shall be considered a separate violation.

§ 227-16. Construction and technical standards.

- A. Compliance with construction codes.
- (1) Construction practices shall be in accordance with all applicable provisions of the Occupational Safety and Health Act of 1970 and any amendments thereto as well as all applicable laws, rules and regulations of the state and the Village, including but not limited to requirements of the Village in regard to various electrical wiring necessary to the operation of Village functions, including but not limited to traffic control signalization, rights-of-way lighting, fire lines and communications lines.
 - (2) All installation of electronic equipment shall be of a permanent nature, durable and installed in accordance with the applicable provisions of the current editions of the National Electrical Safety Code as published by the Institute of Electrical and Electronics Engineers, the National Electrical Code of the National Fire Protection Association, and all state and local codes where applicable.
 - (3) Antenna supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the United States Department of Transportation and all other applicable laws, rules and regulations of the state and the Village.
- B. Performance standards. The system shall be installed, maintained and operated in accordance with the highest accepted standards of the industry. The franchisee shall design and construct the system so as to meet the following minimum standards:
- (1) The cable system should be capable of continuous twenty-four-hour daily operation without severe material degradation of signal except during extremely inclement weather and immediately following extraordinary storms which adversely affect utility services or which damage major system components.
 - (2) The cable system should be capable of operating over an outdoor temperature range of -25° F. to +135° F. and over variation in supply voltages from 105 to 130 volts AC without catastrophic failure or irreversible performance changes.
- C. Technical standards. Except as otherwise provided in federal law, each cable system shall be designed, installed and operated so as to comply with all applicable technical standards, codes, and regulations as promulgated by the FCC and other federal, state and local

authorities. In this regard, 47 CFR § 76.60, relating to technical standards (including but not limited to performance monitoring and measurements), shall apply in full and is hereby incorporated herein by this reference, except as preempted by federal law. All other applicable state or Village laws, rules or regulations relating to technical standards and operation of the system as may be enacted or promulgated from time to time shall apply and govern the installation and operation of the system to the extent such laws, rules or regulations are not preempted by federal regulation.

§ 227-17. Customer service standards.

A. Office and phone service.

- (1) The franchisee shall maintain an office in the City of Stevens Point which shall be open and staffed during normal business hours. The franchisee shall have a locally listed telephone number and be so operated that complaints and requests for repairs or adjustments may be received 24 hours per day, each day of the year. The franchisee's personnel at the local office shall, at a minimum, be able to provide immediate billing information, provide for equipment pickup and dropoff, and provide customer service information.
- (2) Trained company representatives will be available to respond to telephone inquiries from 7:00 a.m. to 8:00 p.m. Monday through Saturday. Between 8:00 p.m. and 7:00 a.m. Monday through Saturday, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received by the franchisee's answering service or automated response system must be responded to by a trained company representative on the next business day.
- (3) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed 30 seconds from when the connection is made. If the call needs to be transferred, transfer time shall not exceed 30 seconds. Callers will receive a busy signal less than 3% of the time. Calls will be lost or abandoned less than 3% of the time. These standards shall be met no less than 90% of the time, measured on a quarterly basis.
- (4) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located. A franchisee may use an agent such as a bank or other business to receive bill payment from cable customers during and outside of normal business hours. Such an arrangement, however, will not relieve the franchisee of its obligation to have its own bill payment location open at least during normal business hours. The account of a customer who remits payment at any authorized bill payment location will be credited by the franchisee no later than the beginning of the following business day.
- (5) The franchisee shall notify the Village Clerk or his designee as promptly as possible, by any available means, including accessing telephones away from the franchisee's premises, whenever there is a total interruption of telephone service which affects the franchisee's subscriber service phone lines.
- (6) Failure to meet these standards shall subject the franchisee to appropriate

enforcement actions from the Village.

B. Notification requirements.

- (1) The franchisee shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request of a subscriber or potential subscriber. A current version of the information will be provided to the Village upon request and automatically whenever the material provided to subscribers or potential subscribers changes. The notice provided must provide information specific to Plover. However, nothing prevents the company from complying with this section by sending a national notice and a separate notice that provides detail concerning local procedures, so long as the two are consistent.
 - (a) Products and services offered.
 - (b) Prices and options for programming services and conditions of subscription to programming and other services. In order that subscribers are fully apprised of the charges they may incur, the franchisee shall note that advertised rates may be subject to additional fees.
 - (c) Installation and service maintenance policies, including, when applicable, information regarding the subscriber's home wiring rights and information describing ownership of internal wiring during the period service is provided.
 - (d) Instructions on how to use the cable service.
 - (e) Channel positions of programming carried on the system.
 - (f) Billing and complaint procedures, including address and telephone number of the Village Clerk's office. The telephone number of the Village Clerk's office will be omitted from monthly billing statements if the Village makes a specific request that it may be omitted. Such notification shall be either a separate document which may be included with a billing statement or included on the portion of the monthly bill that is to be retained by the subscriber.
 - (g) The address and telephone number of the franchisee's office to which complaints may be reported.
 - (h) Subscribers' right to obtain refunds or credits from the franchisee and the steps that must be taken to obtain the refunds and credits.
 - (i) The availability of parental control devices.
- (2) Consistent with FCC customer service rules, customers will be notified of any changes in rates, programming services, or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of 30 days in advance in writing of such changes if the change is within the control of the franchisee. In addition, the franchisee shall notify subscribers 30 days in advance of any significant changes in the other information required by Subsection B(1).
- (3) The Village shall be notified of any change in rates, programming services, channel

position or policy at least 30 days in advance of such change and shall use its best efforts to provide 45 days' advance written notice, by letter delivered to the Village Clerk, except where such notification is impossible because the change is beyond the control of the franchisee or any affiliate, in which case the notice must be given as quickly as possible. Such information will be deemed to be a trade secret under state law to the extent permitted, until such time as the franchisee notifies the public. As part of this notice, the franchisee will tell the Village how notice will be provided to subscribers and provide a copy of the notice that will be given to subscribers, or, if the precise notice is not available, the franchisee will provide the text of the notice.

- (4) Notice to subscribers must be reasonable.
- (5) Every notice of termination of service shall include all of the following information:
 - (a) The name and address of the subscriber whose account is delinquent;
 - (b) Current account balance;
 - (c) The date by which payment is required in order to avoid termination of service; and
 - (d) The telephone number of a representative of franchisee who can provide additional information and handle complaints or initiate an investigation concerning the service and charges in question.
- (6) The following special notice procedures shall apply:
 - (a) At any time a person subscribes to any service, the person must be specifically informed whether there will be a charge to drop the service;
 - (b) If there is any charge for terminating a promotional or free product or service, the charge must be disclosed in writing prior to connection of the service or provision of the product;
 - (c) The franchisee shall inform, on a regular basis, the person that the person is entitled, if offered by the franchisee, to refunds or credits if the franchisee's personnel miss the appointment without the consent of the person; and
 - (d) Upon request, the franchisee shall provide information regarding the availability of parental control devices.

C. Service calls and response time. Under normal operating conditions, each of the following standards will be met no less than 95% of the time, as measured on a quarterly basis:

- (1) Installations to locations that are located within 150 feet of the existing distribution system will be performed within seven business days after an order has been placed. Installations to locations that are located more than 150 feet away from, but within 300 feet of, the existing distribution system will be performed within 14 days after an order has been placed.
- (2) Where a request for service can be satisfied without a service call, the request must be satisfied within three business days from the date of request.

- (3) For installations to locations that are more than 300 feet from the existing distribution system, service must be provided within 30 days of the date the person requesting service agrees to pay the charges associated with the installation. Nothing in this section permits a franchisee to charge for extending service in an area where the franchisee is required to provide service pursuant to its franchise agreement. Installations on new construction entitled to service under a franchise agreement or this chapter shall be completed within 90 days of the date of occupancy.
 - (4) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. The franchisee may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.
 - (5) The franchisee may not cancel an appointment with a person after the close of business on the business day prior to the scheduled appointment without the person's consent.
 - (6) If the franchisee's representative is running late for an appointment with a subscriber and will not be able to keep the appointment as scheduled, the franchisee will make an effort to contact the person directly. If, however, the person is unavailable at the time the contact attempt is made, the franchisee will attempt a second contact at least one more time during the previously agreed upon appointment window. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer. This later contact is an independent obligation and will not necessarily excuse a missed appointment. Contacting the person will not negate any applicable requirement for a credit.
 - (7) Under normal operating conditions, if the franchisee does not arrive for installations or service calls by appointment within the scheduled four-hour time frame agreed to by the person, the person may request within 30 days of the missed appointment and is entitled to receive a credit of \$20 for missed service call appointments or a free installation for missed installation appointments.
 - (8) Excluding conditions beyond the control of the franchisee, the franchisee will begin working on service interruptions promptly and in no event later than 24 hours after the interruption becomes known to the franchisee. The franchisee must begin actions to correct other service problems the next business day after notification of the service problem. Merely acknowledging the existence of the problem does not satisfy this requirement.
 - (9) Service interruptions must be corrected within 36 hours of the time that the interruption becomes known to the franchisee.
 - (10) Other problems must be solved within 96 hours of the time that the problems become known to the franchisee.
- D. Disconnect/downgrade charges; time for disconnection. The franchisee shall be prohibited from levying a disconnect charge upon any subscriber who wishes to stop subscribing to the franchisee's service. For purposes of billing, a request for disconnection shall be

effective immediately upon the subscriber's oral or written request, and the subscriber may not be billed for any service provided after the request and is entitled to refunds on any prepaid period. However, in the case of special promotions, a subscriber is not entitled to a refund of prepayment amounts if the subscriber was fully and clearly informed in writing prior to taking the service that prepaid amounts would not be returned.

- E. Downgrade charges. Nothing prevents a franchisee from establishing reasonable charges to disconnect the service of persons who fail to pay their bills or from imposing reasonable downgrade charges.
- F. Refunds, credits and rebates. In addition to such refunds, credits and rebates provided for in the foregoing sections, subscribers shall be entitled to a refund, rebate or credit in each of the following circumstances:
 - (1) In the case of any failure to notify a subscriber of a rate increase that is implemented before the notice is corrected, the subscriber shall be entitled to service at the old, lower rate until notice is provided as required herein, provided that, if the franchisee is not notified that the notice was defective within 30 days of the date the increase was implemented, the old, lower rate will apply only for the first full monthly billing cycle.
 - (2) In the case of any failure to provide other required notices, where the franchisee implements the change before the notice violation is corrected:
 - (a) Where the change involves a change in services but not in charges, subscribers as to whom the notice was defective will be provided a credit equivalent to free basic service for one month upon the subscriber's request; a complaint from the subscriber related to the notice will be deemed to be a request for the credit.
 - (b) Where the change involves a charge (e.g., a late fee), any incremental increase in the charge, or in the case of a new charge, the entire charge, shall be waived until the notice is corrected.
- G. Unscheduled service interruptions; notifications and sanctions.
 - (1) The franchisee may interrupt system service after 7:00 a.m. and before 1:00 a.m. only upon necessary cause for the shortest time possible and only after publishing notice of such service interruption, except for emergency situations. Services may be interrupted between 1:00 a.m. and 7:00 a.m. for routine testing, maintenance and repair, without notification, provided that all such interruptions are limited to the shortest possible time. Except for conditions not within the franchisee's control, or for authorized and scheduled interruptions, in the event of an aggregate of more than two hours of service interruptions or six distinct service interruptions within a twenty-four-hour period, the franchisee shall provide a rebate for the twenty-four-hour period to any customer that calls and reports the outage or that requests a rebate.
 - (2) Upon notification by a subscriber of a service interruption, a cable operator shall give the subscriber a credit for one day of cable service if cable service is interrupted for more than four hours in one day and the interruption is caused by the cable operator.

- (3) Upon notification by a subscriber of a service interruption, a cable operator shall give the subscriber credit for each hour that cable service is interrupted if cable service is interrupted for more than four hours in one day and the interruption is not caused by the cable operator.

H. Bills and billing disputes.

- (1) Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits. In case of a billing dispute, the franchisee must respond to a written complaint to a subscriber within 30 days. If, on bills, the franchisee chooses to itemize as a separate line item franchise fees and/or other governmentally imposed fees attributable to the total bill, such fees must be shown in accordance with any applicable law concerning the franchisee's ability to itemize such fees.
- (2) Refund checks or rebates.
 - (a) Refund checks or rebates will be issued promptly but no later than either:
 - [1] The customer's next billing cycle following resolution of the request or 30 days, whichever is earlier; or
 - [2] A return of the equipment supplied by the cable operator if service is terminated.
 - (b) Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.
- (3) A specific due date at least 10 business days from the date of mailing shall be indicated on every subscriber bill. This provision applies only to active accounts in good standing, not those accounts pending disconnect for prior delinquencies. A late charge or other fee for late payment may not be imposed earlier than the later of 23 days after the bill is mailed or the 20th day of the month in which the service for which payment is sought is rendered. For purposes of determining whether a fee may be imposed, the bill is deemed paid on the date the franchisee receives payment, and it is the franchisee's responsibility to ensure that its posting and crediting practices will not result in assessment of improper fees and charges upon subscribers.
- (4) Any subscriber who, in good faith, disputes all or part of any bill has the option of withholding the disputed amount without disconnection or imposition of late fees until the franchisee has investigated the dispute and has made a determination that the amount is owed, provided that:
 - (a) The subscriber pays all undisputed charges;
 - (b) The subscriber provides written notification of the dispute to the franchisee in a timely manner and includes identifying information; and
 - (c) The subscriber cooperates in determining the appropriateness of the charges in dispute.

- (5) Subscriber bills from the franchisee shall include the name, address, and telephone number of the Village Clerk. The Village Clerk will provide the required information to the franchisee on an annual basis by January 1 or as needed.
 - (6) The franchisee shall forward all regulatory billing inserts affecting rates, policies and procedures and copies of all other mailings required by law or franchise to subscribers to the Village Clerk 15 days prior to the time they are provided to subscribers. Copies of notices to subscribers must be forwarded to the Village Clerk to determine compliance pursuant to applicable law.
 - (7) It is the franchisee's obligation to pick up any equipment upon termination of any service if the franchisee initially delivered the equipment to the subscriber. Any charges imposed for pickup of such equipment shall not exceed the charge for delivering the equipment, assuming that the customer honors the equipment pickup appointment agreed to with the company.
- I. Complaints. If a complaint to a franchisee cannot be resolved to a customer's satisfaction, the Village may consider individual cases brought to its attention and may seek that information necessary to investigate the dispute and to exercise any authority the Village may have to resolve the dispute.
- J. Complaint procedure.
- (1) The Village Clerk, or designee, upon receiving complaints about cable service shall follow the procedure below:
 - (a) Keep a log of complaints received by telephone. The log shall include the date made, the name and address of the person lodging the complaint, the subject of the complaint and the action taken. The Village Clerk shall provide a copy of the complaint log to the franchisee as frequently as once per week, or less frequently if the number of complaints is low.
 - (b) Acknowledge the receipt of written complaints by a letter to the complainant thanking the complainant for his or her complaint and telling the complainant a copy of the complaint is being forwarded to the franchisee and to the Telecommunications Commission.
 - (2) The franchisee shall make a written report to the Village Clerk of its disposition of the complaints it receives from the Village Clerk. That report shall be in two parts:
 - (a) The first part shall be its disposition of complaints included in the log.
 - (b) The second part shall be its disposition of written complaints forwarded to the franchisee by the Village Clerk.
 - (3) This written report shall be forwarded to the Village Clerk in sufficient time so that the report can be included with the agenda for the next meeting of the Telecommunications Commission.
 - (4) If the Village determines the franchisee has not satisfactorily resolved complaints referred to it by the Village Clerk, the franchisee may be subject to enforcement under § 227-22.

K. Disconnection or denial of service.

- (1) The franchisee shall not terminate residential service for nonpayment of a delinquent account unless the franchisee provides initial written notice of the delinquency and impending disconnection at least 10 days prior to the proposed termination. The notice shall be mailed, postage prepaid, to the subscriber to whom the service is billed. This notice shall not be sent until 15 days after the delinquent date of the bill. The disconnect notice may be included as part of a mailing containing a billing statement so long as the disconnect notice is prominent.
- (2) The franchisee shall terminate service only on days when the subscriber can reach a representative of the franchisee either in person or by telephone. Service terminated without good cause must be restored without charge for the service restoration. In addition, the franchisee must provide two months' credit or refund for basic service plus one other service tier selected by the subscriber at no cost to the subscriber. Good cause includes, but is not limited to, failure to pay, payment by check for which there are insufficient funds, or theft of service.
- (3) Subject to provisions of the franchise agreement, the franchisee shall furnish and maintain services to each person in the franchise area who makes a request to receive any programming service. Nothing in these standards shall limit the right of franchisee to deny service to any household or individual who or which has a negative credit or service history with the franchisee, which may include nonpayment of bills or theft or damage to the franchisee's equipment, or who or which has threatened or assaulted employees of the franchisee in the course of their employment, or for other good cause, which must be documented; provided, however, that in the event service is denied, the franchisee will give notice to the subscriber of the right to contact the appropriate regulatory authority, providing name, address, and phone number as directed by the franchising authority.

L. Deposits, refunds and credits. The franchisee may require refundable deposits for service or equipment. Upon termination of service for any reason, subscribers will be entitled to receive a refund or credit against amounts owed to the franchisee equal to the deposit.

- (1) On all deposits, the franchisee shall be required to pay simple interest at a rate of 1/2% per month (6% per year). Such interest shall be accrued and payable upon termination of service. Upon termination of service for any reason, subscribers will be entitled to receive a refund or credit against amounts owed the franchisee equal to the deposit plus accumulated interest. The rate may be modified to reflect prevailing market rates upon approval by the Village which shall not be unreasonably withheld. Such interest shall be accrued on deposits charged to subscribers after the effective date of the franchise.
- (2) Refund checks will be issued within 30 days following the resolution of the event giving rise to the refund. In addition to a refund, if the franchisee fails to mail a check for a refund to any subscriber disconnecting service with an outstanding credit of \$3 or more within 30 days of the date service is ended, and the subscriber has returned all franchisee-owned equipment, the subscriber is entitled to receive a ten-dollar penalty payment, upon request by the subscriber, in addition to the total refund due.

Failure to comply with the ten-dollar penalty provision shall be grounds for appropriate enforcement actions by the Village. Refunds will be provided to subscribers with outstanding credits of less than \$3 upon request by the subscriber.

- (3) Credits for service will be issued no later than 30 days after the event giving rise to a credit or the subscriber's next billing cycle following the determination that a credit is warranted, whichever occurs first.

M. Rates, fees and charges.

- (1) The franchisee shall not, except to the extent permitted by law, impose any fee or charge on any subscriber for service calls to said subscriber's premises to perform any repair or maintenance work related to franchisee-installed equipment necessary to receive service, except for any such work which was necessitated solely by a negligent or wrongful act of said subscriber.
- (2) Where the actions of franchisee, its agent(s) or subcontractor(s) can be shown upon a reasonable demonstration of evidence to have contributed to the theft, loss or damage or a converter or other equipment lawfully used by a subscriber, the subscriber's liability with respect to said converter or other equipment shall be reduced to the extent of such contributing actions.
- (3) The franchisee shall be entitled to recover a reasonable fee for all checks returned due to insufficient funds.

N. Employee and vehicle identification. All personnel and service vehicles of the franchisee or its subcontractors contacting subscribers or potential subscribers outside the office of franchisee or performing any work within the Village rights-of-way must be clearly identified as associated with the franchisee through visible uniform insignia, photo identification devices or signs affixed to the vehicle.

O. Rights reserved by the Village. The Village reserves the right to establish additional, reasonable subscriber service standards from time to time, as may be necessary.

§ 227-18. Rates.

- A. Regulation. The Village may regulate rates except to the extent prohibited by state and federal law.
- B. Rate filings. Each franchisee shall file with the Village an up-to-date rate schedule of all subscriber and user rates, fees and charges for all cable services and products provided, which schedule shall be on file in the office of the Village Clerk at all times. All franchisees shall at all times comply with the geographically uniform rate structure regulations of the FCC at 4 CFR § 76.984, unless said franchisee is subject to effective competition as defined at 47 CFR § 76.905, as may be amended from time to time.
- C. Nondiscrimination. The system shall be operated in a manner consistent with the principles of fairness and equal accessibility of facilities, equipment, channels, studios and other services to all residents, businesses, public agencies or other entities having a legitimate use for the system, and no one shall be arbitrarily excluded from its use. The franchisee shall not discriminate in the assessment, levy, charge, imposition or collection of rates, fees

or charges on the basis of race, color, religion, ancestry, sex, age, physical disability, which includes but is not limited to HIV/AIDS, national origin, sexual or affectional preference or marital status.

- D. Promotional campaigns. Nothing in this chapter shall be construed to prohibit the reduction or waiving of charges in conjunction with promotional campaigns for the purpose of attracting subscribers or users, so long as the promotion is bona fide, temporary, and available to all similarly situated persons throughout the Village.

§ 227-19. Reports.

- A. Annual reports. On or before March 31 of each year during the term of the franchise agreement, the franchisee shall submit a written report to the franchising authority. The report shall be submitted in accordance with mutually agreed upon forms prepared by the Village Clerk after providing a period for notice and comment and providing interested parties an opportunity for notice and comment on the forms. Until such forms are prepared after notice and opportunity for comment, the annual reports shall be prepared in accordance with the general business practices of a franchisee and shall contain at least the following information regarding the previous calendar year, provided that, when it provides the information required by Subsection A(8) and (9), a franchisee need not include proprietary multiple-dwelling unit (MDU) rates and agreements:
- (1) A summary of activities in the development of the system, including but not limited to services begun or discontinued, and homes passed, all per the provisions of this chapter and the franchise agreement.
 - (2) A list of all complaints and system downtime received or experienced during the reporting period. All such submitted data shall include complaint disposition and response time.
 - (3) A summary by category of complaints, identifying the number and nature of complaints and their dispositions.
 - (4) A fully audited revenue report, or a revenue report certified as correct by a franchisee's chief financial officer or his or her agent.
 - (5) A list of officers and members of the board of directors of the franchisee and its parents.
 - (6) A list of stockholders holding 5% or more of the voting stock of the franchisee or its parents.
 - (7) A copy of the franchisee's annual report.
 - (8) A full schedule of all subscriber and user rates, fees and charges for all cable services provided.
 - (9) A copy of subscriber and user agreements used by the franchisee.
- B. Annual surveys. In addition to providing such other information as may be requested under Subsection A, the franchisee shall biannually provide the Village with a biannual opinion

survey which identifies subscribers' programming preferences in the Stevens Point region, which shall be deemed confidential trade secret information and shall not be disclosed by the Village.

- C. Quarterly reports. Within 45 days of the end of each calendar quarter, each franchisee shall, upon request, submit a written report to the franchising authority. The reports shall be submitted in accordance with mutually agreed upon forms prepared by the Village Clerk after providing a period for notice and comment and providing interested parties an opportunity for notice and comment on the forms. Until such forms are prepared after notice and opportunity for comment, the quarterly reports shall be prepared in accordance with the general business practices of a franchisee and shall contain the following information:
- (1) A report showing compliance with the requirements regarding telephone calls specified in the customer service standards.
 - (2) The percentage of time service interruptions were cured within 36 hours, the average time from notice that a problem existed to final cure, and the percentage of time that other service calls were resolved within 96 hours.
 - (3) The percentage of time standard and nonstandard installations were completed within the time required by § 227-17.
 - (4) The total number of complaints received for the quarter, and the number of complaints by type of complaint, and complaints received as a percentage of basic subscribers.
 - (5) The total number of outages, divided into planned and unplanned outages, and showing the number of outages and the total duration of outages. An outage is defined as a loss of audio or video or impairment of audio or video affecting more than five subscribers.
 - (6) A list of all services offered by the franchisee, provided that, after the initial filing, subsequent filings need only identify new services and changes in services offered.
- D. Reports to others. The franchisee shall file promptly with the Village a copy of any document pertaining to the system that the franchisee files with the FCC, the Securities and Exchange Commission or any other regulatory agency with competent jurisdiction. To the extent that such documents contain, to the satisfaction of the Village Clerk, the information required by other reports hereunder, the Village Clerk may suspend the requirements to file such other reports with the Village so as to avoid duplication and the administrative costs attendant thereto. Alternatively, a franchisee may comply with this subsection by providing the Village a list and short description of the documents it files and providing copies of the documents upon request. The list must be kept current.
- E. Material misrepresentations. Any material misrepresentation made by the franchisee in any report required by this section shall subject the franchisee to the penalty provisions of this chapter and shall subject the franchisee to all remedies available to the Village by law.
- F. Access to books and records. The Village may inspect and copy books and records of the franchisee that are reasonably necessary to the enforcement of any provision of this chapter

and the franchise agreement, to the conduct of performance evaluation sessions, or to the exercise of any authority that the Village may have under the same or any other provision of applicable law. Without limiting the foregoing, a franchisee shall provide the Village access to complaint data to enable the Village to fully investigate subscriber complaints. Books and records shall be produced to the Village for inspection at the franchisee's local office or at such other mutually agreed upon location within the Village; provided, however, that nothing in this chapter shall be read to require the franchisee to violate any provision of federal or state law relating to customer privacy. Information requested shall be made available for inspection within 14 business days of a request therefor, which period shall be subject to extension for good cause shown where no harm will result to the public interest from the delay.

§ 227-20. Performance evaluation sessions.

To provide for technological advances in the state of the art of cable communications, to promote the maximum degree of flexibility and utilization of the system, to evaluate the franchisee's performance and compliance with the provisions of this chapter and the franchise agreement, and to evaluate the performance of every operator to ensure that the quality of every operator's service continues to reasonably meet the needs of the community, the Village and each franchisee shall comply with the following review procedures:

A. Procedure.

- (1) The Village may commence a regularly scheduled review session any time after the second anniversary date of the execution of the franchise agreement and subsequently every two years thereafter. All review sessions shall be open to the public. Notice of date, time, location and agenda shall be given by the Village by publication at least once in a newspaper of Village-wide general circulation at least one week prior to each session. The costs associated with such notice should be split equally between the Village and affected franchisee.
- (2) The Village may hold special review sessions at any time on specific issues relevant to the system. All such review sessions shall be open to the public and shall be advertised, if possible, as provided in Subsection A(1) of this section. Either the Village or the franchisee may select additional topics for discussion at any regular or special review session.
- (3) The Village shall provide for the taking of written minutes and a recording of all review sessions held.

B. Topics. Topics for discussion and review at the regular review sessions shall include but shall not be limited to the following: rate structure, free or discounted services, application of new technologies, system performance, services provided, programming, subscriber complaints, user complaints, rights of privacy, construction progress, community service channel implementation and utilization, amendments to this chapter, undergrounding process and developments in the law.

§ 227-21. Renewal of franchise.

The procedure for considering renewal of the franchise agreement shall be as provided by federal law.

§ 227-22. Enforcement of franchise.

A. In the event that the Village believes that the franchisee has breached or violated any material provision of this chapter or a franchise granted hereunder, the Village and the grantee shall act in accordance with the following procedures:

- (1) The Village may notify the franchisee of the alleged violation or breach, stating with specificity the nature of the alleged violation or breach, and demand that the franchisee cure the same within a reasonable time, which shall not be less than 15 days in the case of an alleged failure of the franchisee to pay any sum or other amount due the Village under this chapter or the franchisee's franchise and 30 days in all other cases. The franchisee may, within 10 days of receipt of such notice, submit a written response challenging said alleged violation which shall toll the running of the time frames herein until the Village Board issues a written decision following consideration of the challenge pursuant to the public hearing specified herein. If the franchisee fails either to cure the alleged violation or breach within the time prescribed or to commence correction of the violation or breach within the time prescribed and thereafter diligently pursue correction of such alleged violation or breach, the Village shall then give written notice of not less than 14 days of a public hearing to be held before the Village Board. Said notice shall specify the violations or breaches alleged to have occurred. At the public hearing, the Village Board shall hear and consider relevant evidence and thereafter render findings and its decision. In the event that the Village Board finds that a material violation or breach exists and that the grantee has not cured the same in a satisfactory manner or has not diligently commenced to cure of such violation or breach after notice thereof from the Village and is not diligently proceeding to fully cure such violation or breach, the Village Board may impose penalties from any security fund required in this chapter or a franchise agreement or may terminate the franchisee's franchise and all rights and privileges of the franchise. If the Village chooses to terminate the franchisee's franchise, the following additional procedure shall be followed:
 - (a) After holding the public hearing, the Village shall provide the franchisee with written notice of the Village's intention to terminate the franchise and specify in detail the reason or cause for the proposed termination. The Village shall allow the franchisee a minimum of 15 days subsequent to receipt of the notice in which to cure the default.
 - (b) The franchisee shall be provided with an opportunity to be heard at a regular or special meeting of the Village Board prior to any final decision of the Village to terminate the franchisee's franchise.
- (2) In the event that the Village determines to terminate the franchisee's franchise, the franchisee shall have an opportunity to appeal said decision in accordance with all applicable laws.
- (3) If a valid appeal is filed, the franchise shall remain in full force and affect while said

appeal is pending, unless the term of the franchise sooner expires.

- B. Remedies cumulative. All remedies under this chapter and any franchise are cumulative unless otherwise expressly stated. The exercise of one remedy shall not foreclose use of another, nor shall the exercise of a remedy or the payment of liquidated damages or penalties relieve a franchisee of its obligations to comply with its franchise. Remedies may be used singly or in combination; in addition, the Village may exercise any rights it has at law or equity. Recovery by the Village of any amounts under insurance, the performance bond, the security fund or letter of credit, or otherwise does not limit a franchisee's duty to indemnify the Village in any way, nor shall such recovery relieve a franchisee of its obligations under a franchise, limit the amounts owed to the Village, or in any respect prevent the Village from exercising any other right or remedy it may have. Nothing herein shall be read to authorize the double recovery of damages.
- C. Right to require dismantling. In the event that the Village exercises its option to require the franchisee to dismantle the cable system, the franchisee shall, in an expeditious manner, at its own expense and at the discretion of the Village, restore any property, public or private, to the condition in which it existed prior to the erection or construction of the cable system, including any improvements made to such property subsequent to the construction of the cable system.

§ 227-23. Continuity of cable service.

The franchisee shall provide continuous service for the entire term of the franchise agreement to all subscribers and users in return for payment of the established rates, fees and charges. If for any reason the franchise becomes void, the franchisee shall continue to operate the system in a normal and orderly manner consistent with federal law until an orderly and lawful change of operation is effectuated. This period of operation shall not exceed 60 days from the date of occurrence or the date any appeals of the same are finally concluded, whichever is later. During such interim period, the franchisee shall not make any material, administrative or operational change that would tend to degrade the quality of service but should be entitled to revenue derived during the operation of the system.

§ 227-24. Purchase of cable system by Village.

In the event of a termination or denial of franchise renewal of the franchise agreement by the Village for cause, the Village may purchase the system for an equitable price consistent with 47 U.S.C. § 547. Upon other termination of the franchise agreement the value of the system shall be solely based on the fair market value of the system. No value shall be assigned to the franchise itself whether termination is or is not for cause.

§ 227-25. Foreclosure and receivership.

- A. Foreclosure. In the case of a foreclosure or other judicial sale or termination of lease of the plant, property or equipment of the franchisee, or any substantial part thereof, or any rights under the franchise agreement, the franchisee shall serve written notice upon the Village of any such event, and the Village may serve written notice of termination upon the franchisee and the successful bidder at such sale, in which event the franchise and the franchisee

agreement and all rights and privileges of the franchisee thereunder shall cease and terminate 30 days after service of such notice, unless:

- (1) The Village President and Village Board have approved the transfer of ownership of the franchise, in accordance with all pertinent provisions of § 227-26 (Transfers and assignments); and
 - (2) Such successful bidder shall have covenanted and agreed with the Village, in writing in a form approved by the Village, to assume and be bound by all the terms and conditions of this chapter and the franchise agreement.
- B. Receivership. The franchise shall terminate 120 days after the appointment of a receiver, or trustee, to take over and conduct the business of the franchisee, whether in receivership, reorganization, bankruptcy or other related action or proceeding.
- C. Failure to comply. Failure to comply with the provisions of Subsection A of this section shall be deemed an unauthorized transfer pursuant to the provisions of § 227-26 (Transfers and assignments).

§ 227-26. Transfers and assignments.

The procedures for transfers and assignments of the franchise agreement will conform to the requirements as set forth in federal law and applicable FCC regulations and will include the following requirements:

- A. Transfer rights. The franchisee shall not sell, transfer, assign, exchange or release or permit the sale, transfer, assignment, exchange or release of more than 10% ownership of the system, nor shall the franchisee sell, transfer, assign, exchange, or release or permit the sale, transfer, assignment, exchange, or release of the rights in the franchise agreement to a person (hereinafter "proposed transferee") without the prior written authorization of the Village President and Village Board. A transfer of ownership is presumed to occur if 40% or more of the ownership interest in a cable system is transferred. The Village President and Village Board specifically reserve the right to deny, restrict or condition authorization to transfer upon the criteria stated in this section and any other lawful criteria the Village President and Village Board determine to be necessary in the public interest.
- B. Required information. The franchisee shall provide the following information to the Village:
- (1) All information and forms required under federal law or the equivalent of such forms if no longer required by federal law;
 - (2) Any contracts or other documents that constitute the proposed transaction and all documents, schedules, exhibits, or the like referred to therein (confidential trade, business, pricing or marketing information or information not otherwise publicly available may be redacted); and
 - (3) Unless already provided under FCC Form 394, information documenting the proposed transferee's legal, technical and financial qualifications to own and operate the cable system.

- C. Village review. Once the required information has been provided, the transfer application shall be subject to review by the Village, and any approval shall be subject to the Village's determination that:
- (1) The proposed transferee has the qualifications to construct, operate and repair the system proposed in conformity with applicable law.
 - (2) The proposed transferee will enter into a franchise and comply with any conditions precedent to its effectiveness. This section does not authorize the Village to exercise authority it does not otherwise have under applicable law.
- D. Approval. Any approval will also be subject to a determination by the Village that:
- (1) The transferee is legally, technically and financially qualified;
 - (2) The transferee will agree to be bound by all the conditions of the franchise and to assume all the obligations of its predecessor;
 - (3) Any outstanding compliance and compensation issues will be resolved or preserved to the satisfaction of the Village; and
 - (4) The proposed transferee and the current franchisee have provided all required information so that the Village may act on the application.
- E. Acceptance. Any proposed transferee shall execute an agreement, in such form as acceptable to the Village, that it will assume and be bound by all of the provisions, terms and conditions of this chapter, the franchise agreement and any other conditions the Village President and Village Board may have established in granting authorization as contemplated by Subsections A through D.
- F. Unauthorized transfer.
- (1) The occurrence of an unauthorized transfer or assignment may, at the option of the Village, provide the Village President and Village Board with cause to terminate the franchise agreement consistent with § 227-22; provided, however, that a franchisee shall have the right to appeal any such determination by the Village and shall continue to operate the system during the pendency of any appeal.
 - (2) From and after any occurrence constituting an unauthorized transfer or assignment, the putative transferee shall not make, execute or enter into any deed, deed of trust, mortgage, contract, conditional sales contract or any loan, lease, pledge, security agreement, sale, pole agreement or any other agreement or hypothecation concerning any system facilities or property, whether real or personal, without the written approval of the Village President and Village Board; provided, however, that this subsection shall be suspended during the pendency of any appeal.
- G. Collateral. Nothing in this section shall be deemed to prohibit the use of the franchisee's property as collateral for security in regard to financing. However, any such financing arrangements shall be subject to all provisions of this chapter and the franchise agreement. In no case may any person, including the institution holding the system as collateral, succeed to the ownership or control of the system or the franchise without the prior approval of the Village.

- H. Proprietary information. Nothing in this section shall be read to prohibit the franchisee from providing information subject to the protections for proprietary information under this chapter or a franchise agreement.

§ 227-27. Subscriber antennas.

The franchisee is expressly prohibited from requiring the removal of any potential or existing subscriber antennas as a condition for provision of service.

§ 227-28. Indemnification; disputes regarding issuance of franchise.

- A. Indemnification. The franchisee shall indemnify, save harmless and defend the Village, its Village President and Village Board, appointed Village boards and commissions, officers and employees, individually and collectively, from all fines, liens, suits, claims, demands, actions, costs of litigation, attorneys' fees, judgments or liability of any kind (including but not limited to libel, slander, invasion of privacy, unauthorized use of any trademark, trade name or service mark, copyright infringement, injury, death or damage to persons or property) arising out of or in any way connected with the installation, construction, operation, maintenance or condition of the system. The franchisee shall assume all risks in the operation of the system and shall be solely responsible and answerable for any and all accidents or injuries to persons or property arising out of the performance of the franchise agreement. The amounts and types of insurance coverage requirements set forth in § 227-29 (Insurance) shall in no way be construed as limiting the scope of indemnity set forth in this section. The Village shall give the franchisee timely written notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the indemnity of this section, where the franchisee is not a party thereto.
- B. Disputes regarding issuance of initial franchise.
 - (1) The franchisee shall indemnify, save harmless and defend the Village, its Village President and Village Board, appointed Village boards and commissions, officers and employees, individually and collectively, from all fines, liens, suits, claims, demands, actions, costs of litigation, attorneys' fees, judgments or liability of any kind arising from the defense of any litigation brought by third parties challenging the right of the Village to issue an initial franchise under state law. The Village shall give the franchisee timely written notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the indemnity of this section, where the franchisee is not a party thereto. In the event that any such litigation ensues, the Village shall tender the defense of such litigation to the franchisee, which shall then defend the litigation; provided, however, that if the Village tenders such defense to the franchisee, the franchisee shall have the right to retain counsel of its own choice, to settle all or any part of the litigation on terms acceptable to the franchisee, or, at any time of its election, to terminate its franchise under the termination terms provided in the franchise and withdraw from any such litigation.
 - (2) The franchisee shall assume the risk of and shall relinquish any claim against the Village in connection with any final, nonappealable determination by a court of competent jurisdiction that the Village lacked the current statutory authority to issue

the franchise.

§ 227-29. Insurance.

A. Coverages.

- (1) Within 30 days after written notification of the award of a franchise by the Village, the franchisee shall file with the Village Clerk and maintain in full force and effect throughout the term of the franchise agreement insurance policies issued by an insurer duly authorized to conduct business in the state, insuring with respect to the installation, construction, operation and maintenance of the system as follows:
 - (a) Comprehensive general and automobile liability coverage, including but not limited to blanket contractual liability; completed operations liability; broad form property damage endorsement, including but not limited to coverage for explosion, collapse and underground hazard; and automobile nonownership liability. This insurance shall be written in the following minimum amounts:
 - [1] For bodily injury, including death: \$500,000 combined single limit.
 - [2] Property damage: \$500,000 combined single limit.
 - [3] Comprehensive automobile liability; bodily injury: \$500,000 combined single limit.
 - [4] Excess umbrella liability in the minimum amount of \$2,000,000.
 - (b) Workers' compensation coverage as required by the laws, rules and regulations of the state.
- (2) All insurance policies required herein shall include the Village as an additional insured.
- (3) With respect to the insurance required herein, the franchisee shall be solely responsible for all premiums due and payable.

B. Endorsement. The insurance policies required by this section shall contain the following endorsement or substantially similar language approved by the Village: "It is hereby understood and agreed that this policy of insurance may not be canceled by the insurer nor the intention not to renew be stated by the insurer until 60 days after receipt by the Village of Plover, by registered mail, of written notice of such intent to cancel or not to renew."

C. Insurance certificate. It is each franchisee's responsibility to ensure that every insurance policy conforms to the Village's requirements. Each must provide a standard insurance certificate or other adequate proof required by the Village, updated whenever there is a change in the policy or insurer, showing that the policies conform to all the requirements herein, without condition or exception. No franchisee may initiate or begin construction until such proof has been provided.

§ 227-30. Bonding.

A. Performance bond. Within 30 days after written notification of the award of a franchise by

the Village, the franchisee shall file with the Village a performance bond for the benefit of the Village pursuant to the terms of the franchise agreement, to be effective upon the execution of the franchise agreement and conditioned that in the event that the franchisee fails to comply with any provision of this chapter, the franchise agreement or other law applicable to the franchise, then there shall be recoverable jointly and severally from the principals and surety any and all damages or costs suffered or incurred by the Village, including but not limited to attorneys' fees and costs of any action or proceeding, and including the full amount of any compensation, indemnification, cost of removal or abandonment of any property or other costs due and owing the Village up to the full principal amount of such bond. The performance bond shall be maintained in full as a continuing obligation during the entire term of the franchise agreement and thereafter until the franchisee shall have satisfied in full any and all obligations to the Village which arise out of or pertain to the franchise agreement. The performance bond shall be issued by a surety company authorized to do business in the state and shall be in a form approved by the Village.

- (1) The performance bond shall contain the following endorsement: "It is hereby understood and agreed that this bond may not be canceled by the surety nor the intention not to renew be stated by the surety until 60 days after receipt by the Village of Plover, by registered mail, of written notice of such intent to cancel or not to renew."
- (2) None of the provisions of this section or § 227-31 (Security fund), nor any damages recovered by the Village thereunder, shall be construed to excuse the faithful performance by or limit the liability of the franchisee.

- B. Return of performance bond. Upon application to the Village, the franchisee shall be entitled to the return of the performance bond at the expiration of the franchise agreement, or any renewal thereof, provided that there is then no outstanding default or moneys due the Village by the franchisee, provided that nothing herein shall be read to excuse a franchisee from its obligation to have a performance bond during the renewal term.

§ 227-31. Security fund.

- A. Amount. Within 60 days after written notification of the award of a franchise by the Village, the franchisee shall deposit with the Treasurer of the Village, and maintain on deposit throughout the term of the franchise agreement, a security fund in the form of a letter of credit as security for the faithful performance by the franchisee of all provisions of this chapter and the franchise agreement and compliance with all orders, permits and directions of any agency or department of the Village having jurisdiction over the franchisee's operations.⁴
- B. Rights reserved. The rights reserved to the Village with respect to the security fund are in addition to all other rights of the Village, whether reserved by this chapter or authorized by law, and no action, proceeding or exercise of a right with respect to such security fund shall affect any other right the Village may have.

4. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

§ 227-32. Franchise fee.

- A. Amount. In addition to any other consideration supporting the award of a franchise by the Village, including but not limited to the granting of the privilege to utilize the rights-of-way of the Village pursuant to this chapter for the purpose of providing cable service, and the franchise agreement to construct and operate the system, the Village reserves the right to charge the franchisee an amount up to and including 5% of gross revenues.
- B. Village's use of franchise fee. It is the intent of the Village that these franchise fees may be utilized, in the discretion of the Village President and Village Board, to defray certain of the costs of local regulation of the franchisee and the system, to support the development and maximum utilization of all PEG channels, to generally encourage development of the system to full utilization and potential, and for other purposes.
- C. Payment of franchise fee. Payments due the Village under this section shall be computed quarterly, for the preceding quarter, as of March 31, June 30, September 30 and December 31 of each year. Each quarterly payment shall be due and payable no later than 45 days after the applicable computation date. Each payment shall be accompanied by a financial statement showing in detail the gross revenues of the franchisee relating to the relevant calendar quarter as well as any other report required by § 227-19.
- D. Accord and satisfaction. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the Village may have for further or additional sums due and payable. The Village or its designee shall have a right to audit all financial records of the franchisee reasonably necessary to the determination of whether gross revenues and franchise fees have been accurately computed and paid upon the giving of reasonable notice and during normal business hours. In the event that an audit results in additional moneys owed the Village, interest shall be charged at the rate of 1% per month on the unpaid balance. If there is a dispute as to whether a particular item of revenue is within the scope of the term "gross revenues," records will be provided without prejudice to any claim the franchisee might have that a franchise fee is not owed on such revenues, provided that a franchisee may withhold revenue records for items that it claims are not gross revenues so long as the franchisee provides a certified statement describing the nature of the revenues contained in the records. Each franchisee shall be required, in accordance with the terms of its franchise, to pay for any audit where the audit shows the franchisee failed to pay the franchise fee due to the Village in an amount of 5% or more.
- E. Other taxes, charges and costs. The payment required pursuant to this section shall be in addition to and not in lieu of:
 - (1) Any other tax, fee or assessment of general applicability (including any such tax, fee or assignment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable subscribers);
 - (2) Capital costs which may be required by a franchise to be incurred by the franchisee for public, educational, or governmental access facilities and requirements; or

- (3) Charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification penalties, or liquidated damages.

§ 227-33. Rights reserved to Village.

- A. Village's rights. Without limitation upon the rights which the Village might otherwise have, every franchise issued shall be deemed to expressly reserve the following rights, powers and authorities, whether expressly set forth in the franchise or not:
 - (1) To exercise its governmental powers now or hereafter to the full extent that such powers may be vested in or granted to the Village.
 - (2) To determine any question of fact relating to the meaning, terms, obligations or other aspects of this chapter and the franchise agreement, subject to applicable judicial review.
 - (3) To inspect all construction or installation work performed by the person, and to supervise all construction in the rights-of-way or on the Village property.
- B. Eminent domain. Nothing in this chapter shall be deemed or construed to impair or affect any applicable right of the Village to exercise its power of eminent domain to acquire the property of the person for just compensation.
- C. Use of poles. The Village reserves the right, during the term of the franchise agreement, to install and utilize, upon the poles owned or jointly owned by the person, any wire or pole fixtures required for municipal purposes, without cost to the Village, so long as such installation and utilization do not unduly interfere with the operation of the system.
- D. Dismantling of unauthorized facilities. Within 30 days following written notice by the Village, any person or other agency that owns, controls or maintains any unauthorized cable system, facility or related appurtenances within the rights-of-way of the Village shall, at its own expense, remove such facilities or appurtenances from the Village's rights-of-way. A cable system or facility is unauthorized and subject to removal under the following circumstances:
 - (1) Upon expiration or termination of the franchise.
 - (2) Upon abandonment of a facility located in a Village rights-of-way.
 - (3) If the cable system or facility was constructed or installed without the permission of the Village or prior to grant of a franchise agreement.
- E. Right to require dismantling. In the event that the Village exercises its option to require the person to dismantle the cable system, the person shall, in an expeditious manner, at its own expense and at the direction of the Village, restore any property, public or private, to the condition in which it existed prior to the erection or construction of the cable system, including any improvements made to such property subsequent to the construction of the cable system.
- F. Abandonment or removal of facilities. The Village may, in its sole discretion, allow a

franchisee or other such person who may own, control or maintain cable system facilities within the rights-of-way of the Village to abandon such facilities in place. No facilities of any type may be abandoned in place without the express written consent of the Village. Any plan for abandonment or removal of a person's facilities must first be approved by the Village, and all necessary permits must be obtained prior to such work. Upon permanent abandonment of the property of such person in place, the property shall become that of the Village, and such person shall submit to the Village an instrument in writing, to be approved by the Village, transferring to the Village the ownership of such property. The provisions of this subsection shall survive the expiration or termination of a franchise granted under this chapter.

- G. Village recourse in case of noncompliance. Any person who fails to comply with the provisions of Subsections D, E and F of this section shall be subject to the penalty provisions of this chapter and of that person's franchise agreement and to all remedies available to the Village by law.

§ 227-34. Nondiscrimination and equal employment opportunity.

- A. Nondiscrimination. A franchisee shall not deny service or access or otherwise discriminate against subscribers, users or any resident of the Village. In this regard, each franchisee shall comply with the human relations provisions of this chapter, § 227-18, incorporated herein by this reference. The franchisee shall strictly adhere to the equal employment opportunity requirements of the FCC. The franchisee shall comply at all times with all other applicable federal, state and Village laws, rules and regulations and all executive and administrative orders relating to nondiscrimination.
- B. Equal opportunity.
 - (1) A franchisee shall define the responsibility of each level of management to ensure positive applications of the policy of equal opportunity, making all reasonable efforts to assure employment at the higher and mid-management levels for minority persons. The franchisee shall conduct a continuing review of employment structures and employment practices and adopt positive recruitment policies, on-the-job training, job design and other measures needed to assure genuine equality of opportunity.
 - (2) Each franchisee shall abide by the following general employment practices:
 - (a) Recruiting through schools and colleges with high minority enrollments.
 - (b) Maintaining systematic contacts with media advocacy groups, minority and human relations organizations, leaders, spokespersons and other appropriate recruitment sources within the Village to make it known that qualified minority persons sensitive to the needs of the minority community are being sought for consideration whenever the franchisee prepares to hire employees so as to assure nondiscrimination in selection for employment.
 - (c) Instructing personally those on the franchisee's staff who make hiring decisions that applicants for all jobs are to be considered without discrimination in accordance with the provisions of this section.

- (d) Making all reasonable efforts to avoid the use of selection techniques or tests that have the effect of discriminating against minority persons.

§ 227-35. Selection of franchisee.

A. Submission of proposal.

- (1) Any person submitting a proposal for an initial franchise shall provide all information required by this chapter and all other information as may be solicited in the Village's request for proposals (RFP) or otherwise required by the Village. Any misrepresentation, failure, neglect or refusal to provide any required information may at the option of the Village render a proposal invalid and it may be given no consideration. The requested information must be complete and verified as true by the applicant. Every proposal must be submitted as an offer, so that the Village may incorporate the proposal into a franchise agreement by reference and may condition the award of any franchise upon the incorporation of the proposal into the franchise agreement.
- (2) All proposals received by the Village from the applicants shall become the sole property of the Village.
- (3) The Village reserves the right to reject any and all proposals and to waive all informalities where the best interest of the Village may be served.
- (4) Before submitting a proposal, each applicant shall be solely responsible for and must:
 - (a) Examine this chapter and the request for proposal documents thoroughly;
 - (b) Be familiar with local conditions that may in any manner affect performance under the franchise, including but in no event limited to relevant demographics, topographies, pole attachment policies of appropriate utility authorities, undergrounding, and subscriber and user desires;
 - (c) Be familiar with federal, state and local laws, ordinances, rules and regulations affecting performance under the franchise; and
 - (d) Carefully correlate all observations with the requirements of this chapter and the request for proposals documents.
- (5) The Village may make such investigations as it deems necessary to determine the ability of the applicant to perform under the franchise agreement, and the applicant shall furnish to the Village all such information and data for this purpose as the Village may request. The Village reserves the right to reject any proposal if the evidence submitted by or investigation of such applicant fails to satisfy the Village that such applicant is properly qualified to carry out the obligations of the franchise agreement, to comply with the provisions of this chapter, or to satisfactorily construct and operate the system. Conditional proposals shall not be accepted.

- B. Proposal evaluation.** The Village Board shall approve or disapprove the application after receiving the recommendations of the applicable committees or commissions. If the Village Board disapproves the application, it shall make a written record supporting its decision.

The Village Board shall consider the following when deciding whether to approve or disapprove the application:

- (1) The extent to which the applicant has substantially complied with the applicable law;
- (2) Whether the quality of the applicant's service, including signal quality, response to customer complaints, billing practices and the like, has been reasonable in light of the needs and interests of the communities served;
- (3) Whether the applicant has the financial, technical, and legal qualifications to hold a cable franchise, which qualifications require that the applicant can be relied upon to perform as promised and in accordance with applicable law;
- (4) Whether the application satisfies requirements established by the Village under this chapter or in an RFP or is otherwise reasonable to meet the future cable-related needs and interests of the community, taking into account the cost of meeting such needs and interests;
- (5) Whether, to the extent not considered as part of this chapter, the applicant will provide adequate public, educational, and governmental use capacity, facilities, or financial support thereof;
- (6) Whether issuance of a franchise is in the public interest considering the immediate and future effect on the public rights-of-way and private property that would be used by the cable system, including the extent to which installation or maintenance as planned would require replacement of property or involve disruption of property, public services, or use of the public rights-of-way, and the comparative superiority or inferiority of competing applications; and
- (7) Whether the approval of the application may eliminate or reduce competition in the delivery of cable service in the Village.

C. Issuance of franchise.

- (1) If the Village finds that it is in the public interest to issue a franchise considering the factors set forth above, the Village may adopt a franchise agreement setting forth the terms and conditions of the franchise, which franchise shall become effective upon satisfaction of conditions precedent to effectiveness and when signed and accepted by the applicant. If the Village denies a franchise, it will cause a written explanation of the denial to issue, which may be in any appropriate form. Without limiting its authority to deny an application for a franchise, the Village specifically reserves the right to reject any application that is incomplete or fails to respond to an RFP. Nothing in this chapter shall be construed in any way to limit the discretion and legislative authority of the Village Board in making decisions relative to the granting, denial, or renewal of franchise.
- (2) Notwithstanding the foregoing, to the extent required by federal law, requests for cable franchise renewal under the Cable Act will be received and reviewed in a manner consistent with Section 626 of the Cable Act, 47 U.S.C. § 546, and every provision of this chapter shall be interpreted in a manner consistent therewith.

D. Application fees.

- (1) Notwithstanding any other requirement of this chapter, each applicant must furnish with its initial proposal a nonrefundable filing fee in the amount determined by Village by certified or cashiers check made payable to the Village of Plover. No proposal for a franchise shall be considered without receipt of such check.
- (2) All checks received will be deposited to an account of the Village and will serve to recover all expenses incurred by the Village in the preparation and granting of the franchise, the execution of the franchise agreement and regulation of the franchisee pursuant to this chapter. Such expenses shall include but not be limited to any and all publication costs, consultants' expenses and the reasonable value of services performed by the Village's employees, agents or contractors.
- (3) In the event that expenses exceed the total amount of filing fees collected from the applicants, the applicant awarded the franchise shall pay to the Village (pro rata in the event more than one applicant is awarded a franchise) the excess amount within 60 days of demand by the Village.

E. Decision final. The decision of the Village President and Village Board concerning franchisee selection shall be final.

F. Processing applications. Upon his or her receipt of a complete application for a cable television franchise, the Village Clerk shall furnish a copy of the application to the Public Works Manager. The Public Works Manager shall make a recommendation to the Public Works Committee as to whether the application should be approved or disapproved. The Public Works Manager shall evaluate the portions of the application that affect the public rights-of-way and other Village property. The Public Works Committee shall make a recommendation to the Village Board as to whether the application should be approved or disapproved.

§ 227-36. Cost of consultants.

Except as otherwise provided by law, notwithstanding any other payment required by this chapter or the franchise agreement, when necessary to aid in the analysis of matters relating to the cable system, including but not limited to rate investigations and regulation, technical standards, construction supervision, financial audits or market surveys in the Village, the Village and franchisee may mutually agree to employ the services of a consultant to assist and advise the Village Clerk and the Village President and Village Board. All reasonable fees of the consultant incurred in this regard shall be shared equally by the franchisee and the Village, regardless of the nature or outcome of any specific matter under consideration. The terms of this section shall not apply to any research cost incurred by the Village in connection with the right of the Village to purchase the cable system.

§ 227-37. Theft of service and tampering.

It shall be unlawful for any person, without the express consent of the franchisee, to make any connection or attachment, extension or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of the system for the purpose of receiving or

redistributing service where the person has not paid for it. Nothing in this section shall be read to prohibit a subscriber to cable service from utilizing lawful subscriber-owned equipment in the enjoyment of such service.

§ 227-38. Violations and penalties. ⁵

Where this chapter provides alternative penalties or remedies, they shall be cumulative, and the imposition of one penalty or remedy shall not prevent the imposition of any other penalty or remedy provided for. Any person convicted of violating any provision of this chapter or any rule or regulation promulgated hereunder shall, upon conviction, be fined not less than \$100 nor more than \$1,000 and costs for each offense and, on default of payment of such forfeiture and costs, may be imprisoned until such forfeiture and costs are paid, but not to exceed six months. Each day of a continuing violation shall constitute a separate and distinct offense.

5. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).